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OFFICE OF PETITIONS

In re Application of : DECISION NOTING
Vanfleet et al. : WITHDRAWAL OF PETITION
Application No. 10/825,950 : UNDER 37 CFR 1.47
Filed: April 16, 2004 : and
Atty Docket No.020375-050300US: DECISION ON PETITION
: UNDER 37 CFR 1.48

This is in response to the "PETITION TO ACCEPT APPLICATION ON BEHALF OF A JOINT INVENTOR WHO CANNOT BE REACHED UNDER 37 C.F.R. § 1.47(a)" and the "REQUEST TO CORRECT INVENTORSHIP PURSUANT TO 37 C.F.R. § 1.48(a)," both filed June 17, 2005. Prior to a decision being rendered on these petitions, on September 19, 2005, applicants filed a "REQUEST TO WITHDRAW PETITION TO ACCEPT APPLICATION ON BEHALF OF A JOINT INVENTOR WHO CANNOT BE REACHED UNDER 37 CFR 1.47(A)."

The petition under § 1.47(a), which is properly treated as a petition under § 1.183 to waive the requirement of § 1.48(a)(3) that the declaration be signed by all of the actual inventors, is **DISMISSED** without consideration on the merits.

The petition under § 1.48(a) is **GRANTED**.

The above-identified application was filed on April 16, 2004, without a properly executed oath or declaration. Steven VanFleet, John Mascavage, Matthew Byrne, Diane Wing and Cassandra Mollett were identified as the joint inventors. Accordingly, on June 28, 2004, applicants were mailed a "Notice to File Missing Parts of Application," requiring an executed

oath or declaration, and a surcharge for late filing. This Notice set a period for reply of two months, with extensions of time obtainable under §1.136(a). On August 30, 2004, applicants timely responded with declarations in compliance with § 1.63, executed by all 5 joint inventors.

However, on June 17, 2005, applicants filed the instant "Request to Correct Inventorship ..." and "Petition under § 1.47(a)." Pursuant to the request filed September 19, 2005, the petition under § 1.47(a) will not be considered.

37 C.F.R. § 1.48(a) provides that:

If the inventive entity is set forth in error in an executed § 1.63 oath or declaration in a nonprovisional application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the inventorship of the nonprovisional application may be amended to name only the actual inventor or inventors. Amendment of the inventorship requires:

- (1) A request to correct the inventorship that sets forth the desired inventorship change;
- (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
- (3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
- (4) The processing fee set forth in § 1.17(i); and
- (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

The request to correct the inventorship requested that omitted inventors Blake Benton, Timothy Horton, Susan Nelson, Suzanne Rogers, Rhonda Sargent, Martin Stivers and Gary Trainor be added. The request included a statement from each of the added inventors that the error in inventorship occurred without

deceptive intention on his or her part. The request as filed on June 17, 2005, included a declaration executed by all of the joint inventors, except inventor Mascavage. However, on September 19, 2005, applicants supplied such a declaration executed by inventor Mascavage. (Accordingly, no consideration under § 1.47 is necessary). Further, the request included payment of the processing fee, and a written consent of assignee with 3.73(b) statement. The written consent filed June 17, 2005 did not reference the correct application. Pursuant to a telephone request by the undersigned, on March 15, 2006, petitioner submitted a written consent of assignee referencing this application.

It is concluded that applicants have met the requirements of § 1.48 to correct the inventorship.

The petition fee for consideration under § 1.48 has been charged to petitioner's Deposit Account, as authorized.

Office records indicate that a corrected filing receipt reflecting the correction of inventorship was mailed on March 22, 2006.

The application will be examined in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3219.



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